Calendar No. 788

100TH CONGRESS *2nd Session*	SENATE	REPORT 100-416

SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1988

REPORT

OF THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

TO ACCOMPANY

S. 2619

PROVIDING REAUTHORIZATION FOR THE SMALL BUSINESS ADMINISTRATION FOR FISCAL YEAR 1989, AND FOR OTHER PURPOSES

JULY 7, 1988.—Ordered to be printed

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Mr. BUMPERS, from the Committee on Small Business, reported the following original bill; which was read twice and placed on the calendar

REPORT

[To accompany S. 2619]

The Committee on Small Business, having considered an original bill, to provide reauthorization for the Small Business Administration for fiscal year 1989, and for other purposes, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

INTRODUCTION

This original Committee bill authorizes appropriations for the Small Business Administration (SBA) for Fiscal Year 1989 and proposes a number of amendments to the Small Business Act and the Small Business Investment Act. The current multi-year authorization for the Small Business Administration contained in P.L. 99-272 expires on September 30, 1988; hence a new authorization is essential.

The President requested a total of $404 million in budget authority for SBA for 1989. The Administration proposed elimination of the remaining direct loan programs for the handicapped, Vietnam-era veterans, Minority Enterprise Small Business Investment Companies, and economic opportunity loans. Further, the Administration proposed imposition of a wide array of user fees and increased loan guarantee fees for SBA programs, as well as the sale of $4.3 billion in SBA loans over 5 years. The net effect of the Administration's budget would be to continue most SBA programs. However,

the proposed asset sales would produce "negative outlays" of $2.3 billion, far exceeding the cost of appropriations necessary to fund the programs.

The Committee held a hearing on the Administration's budget proposal for SBA on March 22, 1988, and subsequently submitted its views on the proposal to the Senate Budget Committee in compliance with the Budget Act.

The Committee agrees with the Administration that the bulk of SBA's programs merit continuation, but the Committee rejects the proposals for elimination of the remaining, rather meager direct loan programs for several severely disadvantaged groups. The Committee also agrees with a number of technical changes proposed by the agency in various programs and has provided for amendments to programs requested by SBA, either formally or informally, on at least a half-dozen issues.

In general, the Committee bill provides funding for all SBA loan and loan guarantee programs for FY 1989 at FY 1988 levels. One exception is the Surety Bond Guarantee Program, which is increased from $1.250 billion in program authority to $1.4 billion. Additionally, the Committee has provided for increases in the salaries and expenses account to cover the cost of living adjustment expected for federal workers in January, 1989, and also for certain increased expenses which the agency is facing in the areas of postage, telephone service, and office rent to the General Services Administration. Furthermore, the Committee expects the agency to need additional personnel to carry out reforms of the minority business development program which are mandated under S. 1993, and now under consideration in the Senate, and in implementing the international trade initiatives which are contained in the Small Business Title of H.R. 3. This title from H.R. 3, which was vetoed by the President, has been incorporated into this bill.

The bill does not address the Administration's proposals with respect to asset sales, increased user fees, or the merger of the Minority Business Development Agency with SBA. These issues have been addressed by the Senate Appropriations Subcommittee on Commerce, State, Justice, the Judiciary and related agencies in its FY 1989 Appropriations measure. The Committee supports the funding restrictions imposed by the Subcommittee and agreed to by the full Appropriations Committee.

I. Committee Consideration

Following the Committee's March 22 hearing on the Administration's budget proposal, a markup was held on May 17, 1988 to consider both this reauthorization bill and S. 1993 and H.R. 1807, the Senate and House versions of legislation to reform SBA's minority business development program. The Committee first discussed the SBA reauthorization bill and ordered it to be reported along with three amendments offered by Committee Members.

The first amendment, offered by Senator Weicker, calls for the reauthorization of legislation allowing rehabilitation facilities for the blind and other severely handicapped (so-called "sheltered workshops") to bid on small business set-aside contracts, and makes several other changes to the sheltered workshop program. The

second amendment, offered by Senator Weicker for himself and Senator Nunn, creates a "Preferred Surety Bond Program" to encourage the larger, standard surety insurance companies to participate in the SBA-guaranteed surety bond program for small and minority-owned contracting companies. Third, Senator Dixon offered an amendment to make two changes in SBA's disaster loan program, one increasing the maximum unsecured disaster loan amount, and the second authorizing the use of disaster funds for making improvements to damaged property to prevent future disaster losses.

With a quorum present, the Committee adopted all three amendments by voice vote, *en bloc,* and ordered the bill, as amended, to be reported.

The Committee bill as reported is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Administration Reauthorization and Amendments Act of 1988".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL REAUTHORIZATION PROVISIONS

Sec. 101. Authorization for appropriations.
Sec. 102. Examinations under the Small Business Investment Act.
Sec. 103. Amendments to title III of the Small Business Investment Act of 1958.
Sec. 104. Development company debentures.
Sec. 105. Trust certificates.
Sec. 106. Development company loan program.
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Sec. 108. Small Business International Trade and Competitiveness Act.
Sec. 109. Breakout procurement center representatives.
Sec. 110. Private sector cooperation.
Sec. 111. Report on background check policy.
Sec. 112. Amendments relating to programs for blind and handicapped.
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TITLE II—PREFERRED SURETY BOND GUARANTEE PROGRAM

Sec. 201. Short title.
Sec. 202. Authority of the administration.
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Sec. 204. Reports and audits of participating sureties.
Sec. 205. Regulations.
Sec. 206. Evaluation and report.
Sec. 207. Sunset.
Sec. 208. Miscellaneous provisions.
Sec. 209. Effective date.

TITLE I—GENERAL REAUTHORIZATION PROVISIONS

SEC. 101. AUTHORIZATION FOR APPROPRIATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by striking the first sentence of subsection (a), by striking subsections (b) through (x), by redesignating subsections (y) and (z)

as subsections (b) and (c), respectively, and by adding after subsection (c), as redesignated, the following new subsections:

"(d) The following program levels are authorized for fiscal year 1989:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $75,000,000 in direct and immediate participation loans, and of such sum, the Administration is authorized to make—

"(A) $20,000,000 in loans as provided in paragraph (10),

"(B) $30,000,000 in loans as provided in paragraph (11), and

"(C) $25,000,000 in loans to disabled veterans and Vietnam-era veterans, as defined in section 1841, of title 38, United States Code, under the general terms and conditions of subchapter IV of chapter 37 of such title.

"(2) For the programs authorized by section 7(a) of this Act and section 504 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,320,000,000 in deferred participation loans and guarantees of debentures, and of such sum, the Administration is authorized to make—

"(A) $5,000,000 in loans as provided in paragraph (10) of section 7(a),

"(B) $65,000,000 in loans as provided in paragraph (11) of section 7(a),

"(C) $450,000,000 in loans as provided in paragraph (13) of section 7(a) and guarantees of debentures as provided in section 504 of the Small Business Investment Act of 1958, and

"(D) $75,000,000 in loans as provided in paragraph (12)(B) of section 7(a) (as added by section 106(d) of the Small Business Administration Reauthorization and Amendments Act of 1988).

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities, and to make $272,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

"(e) There are authorized to be appropriated to the Administration such sums as may be necessary for fiscal year 1989, including $18,000,000 to carry out the provisions of section 412 of the Small Business Investment Act of 1958, and $248,000,000 for salaries and expenses of the Administration.

"(f) There also are authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.".

SEC. 102. EXAMINATIONS UNDER THE SMALL BUSINESS INVESTMENT ACT.

The second sentence of section 310(b) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(b)) is amended to read as follows: "Each such company shall be examined every 2 years, except that the Administration may waive the examination for up to one additional year if—

"(1) the Inspector General determines such a delay would be appropriate, based on—

"(A) the total amount of debentures issued by the company,

"(B) the company's repayment record,

"(C) the prior operating experience of the company,

"(D) the contents and results of the last examination, and

"(E) the management expertise of the company; or

"(2) the company operations have been suspended while the company is involved in litigation or is in receivership.".

SEC. 103. AMENDMENTS TO TITLE III OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) IN GENERAL.—Title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 322. PERIODIC ISSUANCE OF GUARANTEES AND TRUST CERTIFICATES.

"The Administration shall issue guarantees under section 303 and trust certificates under section 321 at periodic intervals of not less than every 3 months and shall do so at such shorter intervals as it deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.".

(b) CONFORMING AMENDMENT.—The table of sections for title III of such Act is amended by adding at the end thereof the following new item:

"Sec. 322. Periodic issuance of guarantees and trust certificates.".

SEC. 104. DEVELOPMENT COMPANY DEBENTURES.

Section 503(a)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(a)(2)) is amended by adding at the end the following: "The Administration shall not decline to issue such guarantee on the basis that the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical, if such property is owned by a related party. For purposes of the preceding sentence, the term 'related party' means a father, mother, son, daughter, wife, husband, brother, or sister.".

SEC. 105. TRUST CERTIFICATES.

Section 5(g)(1) of the Small Business Act (15 U.S.C. 634(g)(1)) is amended by striking ", except those under section 7(a)(13)".

SEC. 106. DEVELOPMENT COMPANY LOAN PROGRAM.

(a) PERMANENT EXTENSION OF PILOT PROGRAM.—Section 504 of the Small Business Investment Act of 1958 (15 U.S.C. 697a) is amended to read as follows:

"SEC. 504. (a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 503 as follows—

"(1) of the program levels otherwise authorized by law for each of fiscal years 1987 and 1988, an amount not to exceed $425,000,000; and

"(2) all of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

"(b) Nothing in this section shall be construed to authorize the Federal Financing Bank to acquire—

"(1) any obligation, if—

"(A) the payment of principal or interest on such obligation has at any time been guaranteed in whole or in part under section 503, and

"(B) such obligation is being sold pursuant to the provisions of the program authorized by this section;

"(2) any obligation which is an interest in any obligation described in paragraph (1); or

"(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).".

(b) COMMERCIAL LOAN INTEREST RATE.—

(1) IN GENERAL.—Section 503 of the Small Business Investment Act of 1958 (15 U.S.C. 697) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(B) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding any other provision of law, the Administration is authorized and directed to promulgate and publish quarterly regulations establishing a maximum permissible interest rate on any commercial loan which funds any portion of the cost of the project which is not funded by a debenture guaranteed under this section.".

(2) REPEALER.—The amendment made by paragraph (1) shall be repealed on October 1, 1990.

(c) TECHNICAL AMENDMENT.—Section 505(a) of the Small Business Investment Act of 1958 (15 U.S.C. 697b(a)) is amended by striking "all of a" and inserting in lieu thereof "all or a".

SEC. 107. AMENDMENTS RELATING TO REVOLVING FUNDS.

(a) REPEAL OF LEASE GUARANTEE FUND.—Section 403 of the Small Business Investment Act of 1958 (15 U.S.C. 694) is hereby repealed. Any moneys remaining in the Lease Guarantee Fund on the date of enactment of this Act shall be transferred to the Small Business Administration's business loan and investment fund.

(b) REPEAL OF POLLUTION CONTROL FUND.—Section 405 of the Small Business Investment Act of 1958 (15 U.S.C. 694-2) is hereby repealed. Any moneys remaining in the Pollution Control Fund on the date of enactment of this Act shall be transferred to the Small Business Administration's business loan and investment fund.

(c) TECHNICAL AMENDMENT.—Sections 4(c)(1) and 4(c)(2) of the Small Business Act (15 U.S.C. 633(c)(1) and 633(c)(2)) are amended by striking "titles III and V" and inserting "titles III, IV, and V".

(d) POLLUTION CONTROL GUARANTEED LOANS.—Section 7(a)(12) of the Small Business Act (15 U.S.C. 636(a)(12)) is amended—

(1) by inserting "(A)" after "(12)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) The Administration may provide loans under this section to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph (by participation or otherwise) may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than $1,000,000.".

SEC. 108. SMALL BUSINESS INTERNATIONAL TRADE AND COMPETITIVENESS ACT.

Title VIII of H.R. 3, the Omnibus Trade and Competitiveness Act of 1988, as agreed to in conference (H. Rept. 100-576), is hereby enacted into law.

SEC. 109. BREAKOUT PROCUREMENT CENTER REPRESENTATIVES.

Subsection (l) of section 15 of the Small Business Act (15 U.S.C. 644(l)) is amended—

(1) by striking out "unrestricted" each place it appears in subparagraph (D) of paragraph (2);

(2) by amending paragraph (2)(E) to read as follows:

"(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;";

(3) by amending paragraph (3) to read as follows:

"(3) A breakout procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a)."; and

(4) by amending paragraph (6) to read as follows:

"(6) For purposes of this subsection, the term 'major procurement center' means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of items other than commercial items and that has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.".

SEC. 110. PRIVATE SECTOR COOPERATION.

(a) EXTENSION OF EFFECTIVE DATE.—Section 7(b) of the Small Business Computer Security and Education Act of 1984 (15 U.S.C. 633 note) is amended by striking the first sentence and inserting the following: "The amendments made to section 4(b)(3) of the Small Business Act by section 3 of this Act are repealed on October 1, 1988. The amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are repealed on October 1, 1990.".

(b) COSPONSORED EVENTS.—Section 8(b)(1)(A) of the Small Business Act (15 U.S.C. 637(b)(1)(A)) is amended—

(1) by inserting after "*Provided,* That the Administration shall take such actions as it deems appropriate to ensure" the following: "that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and", and

(2) by adding at the end thereof the following: "In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and that the Administration is given primary recognition in all cosponsored printed materials.".

SEC. 111. REPORT ON BACKGROUND CHECK POLICY.

The Small Business Administration shall—

(1) review its policies with respect to the procedures which are used to determine eligibility for assistance from the Small Business Administration or participation in Small Business Administration programs, including procedures for accessing criminal records, for all loan applicants, licensees, directors, and all other program participants; and

(2) submit a report to the Small Business Committees of the Senate and House of Representatives not later than 90 days after the date of enactment of this Act on the results of the review, including a description of any changes implemented or prepared as a result of such review.

SEC. 112. AMENDMENTS RELATING TO PROGRAMS FOR BLIND AND HANDICAPPED.

(a) IN GENERAL.—Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) is amended to read as follows:

"(c)(1) As used in this subsection:

"(A) The term 'Committee' means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46).

"(B) The term 'public or private organization for the handicapped' has the same meaning given such term in section 3(e).

"(C) The term 'handicapped individual' has the same meaning given such term in section 3(f).

"(2)(A) During each of the fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year of not more than $50,000,000.

"(B) In each of the fiscal years 1989 through 1993, not more than $8,000,000 of the $50,000,000 authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 47).

"(3) The Administrator shall monitor and evaluate such participation.

"(4)(A) Not later than 10 days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

"(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than 30 days after the filing of the appeal, the Administrator shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

"(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

"(6) For the purpose of this subsection, a contract may be awarded only if at least 75 percent of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.".

(b) REPORT.—Not later than September 30, 1992, the General Accounting Office shall prepare a report describing the impact that contacts awarded under section 15(c) of the Small Business Act have had on for-profit small business concerns for fiscal years 1989 through 1991. The report shall be transmitted to the Senate Committee on Small Business and the Committee on Small Business of the House of Representatives.

(c) TASK FORCE.—There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affairs of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46). The task force shall meet at least once every 6 months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act and rec-

ommending to the Small Business Administration such administrative or statutory changes as it deems appropriate.

SEC. 113. DISASTER LOAN PROGRAMS.

(a) NO COLLATERAL REQUIRED ON LOANS OF $10,000 OR LESS.—Section 7(c)(6) of the Small Business Act (15 U.S.C. 636(c)(6)) is amended by adding at the end of the first paragraph the following new sentence: "The Administration shall not require collateral for loans of $10,000 or less which are made under subsection (b)(1).".

(b) INCREASE IN LOANS TO MITIGATE FUTURE DISASTERS.—Section 7(b)(1)(A) of the Small Business Act (15 U.S.C. 636(b)(1)(A)) is amended by adding at the end thereof the following: *"Provided further*, that the Administration may increase the amount of the loan by up to an additional 20 percent, if it determines such increase is necessary or appropriate to protect the damaged or destroyed property from future disasters by taking mitigating measures, including but not limited to, construction of retaining walls or sea walls, grading or contouring land, relocating utilities, and modifying structures;".

SEC. 114. MISCELLANEOUS AMENDMENTS.

Section 21(g) of the Small Business Act (15 U.S.C. 648(g)) is amended—

(1) by striking "Deputy Associate Administrator for Management Assistance" each place it appears and inserting in lieu thereof "Deputy Associate Administrator for Business Development (Small Business Development Center Program)", and

(2) by striking "Associate Administrator for Management Assistance" and inserting "Associate Administrator for Business Development".

SEC. 115. REGULATIONS.

Notwithstanding any other law, rule or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title not later than 6 months after the date of enactment of this Act.

TITLE II—PREFERRED SURETY BOND GUARANTEE PROGRAM

SEC. 201. SHORT TITLE.

This title may be cited as the "Preferred Surety Bond Guarantee Program Act of 1988".

SEC. 202. AUTHORITY OF THE ADMINISTRATION.

Section 411(a) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)) is amended to read as follows:

"(a)(1) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any contract up to $1,250,000.

"(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

"(3) The Administration may authorize any surety, without further Administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

"(4) No such guarantee may be issued, unless—

"(A) the person who would be principal under the bond is a small business concern;

"(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

"(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

"(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.".

SEC. 203. INDEMNIFICATION.

(a) IN GENERAL.—Section 411(b) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(b)) is amended—

(1) by striking paragraph (3),

(2) by striking "; and" and inserting a period at the end of paragraph (2),

(3) by redesignating paragraph (2) as paragraph (3),

(4) by inserting after paragraph (1) the following new paragraph:

"(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and", and

(5) by inserting at the end the following new sentence:

"In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).".

(b) AMOUNT OF INDEMNIFICATION.—Section 411(c) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(c)) is amended to read as follows:

"(c) Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

"(1) not to exceed 70 percent of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3);

"(2) not to exceed 90 percent of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) or any other subsection;

"(3) equal to 90 percent of the loss incurred and paid in the case of a surety requiring the administration's specific approval for the issuance of a bond, if—

"(A) the total amount of the contract at the time of execution of the bond or bonds is $150,000 or less, or

"(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act; or

"(4) determined pursuant to subsection (b), if applicable.".

(c) LIMITATION ON ADMINISTRATION'S LIABILITY.—Section 411(e) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(e)) is amended—

(1) by striking "or" at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting a comma, and

(3) by adding at the end thereof the following new paragraphs:

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).".

SEC. 204. REPORTS AND AUDITS OF PARTICIPATING SURETIES.

Section 411(g) of the Small Business Investment Act (15 U.S.C. 694b(g)) is amended to read as follows:

"(g)(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

"(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

"(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once each year by examiners selected and approved by the Administration.".

SEC. 205. REGULATIONS.

The Administration shall promulgate final regulations to implement the amendments made by this title not later than 180 days after the date of the enactment of this Act.

SEC. 206. EVALUATION AND REPORT.

Not later than 3 years after the date of enactment of this Act the Comptroller General of the United States shall transmit a report to the Small Business Committees of the Senate and House of Representatives, which evaluates—

(1) the amendments made by this title,

(2) whether participation in the program by standard surety firms has been expanded, and

(3) whether access to bonds by small business concerns especially small business concerns owned and controlled by socially and economically disadvantaged individuals has been improved.

The report shall cover the first 2 full fiscal years following the date of enactment of this Act.

SEC. 207. SUNSET.

The provisions contained in section 411(a)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(3)), shall cease to be

effective on September 30, 1991, or on the last day of the third full fiscal year after the date of enactment of this Act, whichever is later.

SEC. 208. MISCELLANEOUS PROVISIONS.

(a) FUND.—Section 412 of the Small Business Investment Act of 1958 (15 U.S.C. 694c) is amended—

(1) by inserting "(a)" before "There", and

(2) by adding at the end of subsection (a), the following new subsection:

"(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.".

(b) SIZE STANDARDS.—Section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694b) is further amended by adding at the end thereof the following new subsection:

"(j) In prescribing special size standards for participation in the program authorized by this section, the Administration shall ensure that a firm meeting such size standard may be determined to be a small business concern under the size standard establishing its eligibility to participate in the other programs of the Administration.".

SEC. 209. EFFECTIVE DATE.

Except as otherwise provided in this title, the provisions of this title shall become effective upon the expiration of 180 days after the date of its enactment.

II. ANALYSIS OF THE BILL

AUTHORIZATION FOR APPROPRIATIONS

Section 101 of the bill provides for program levels and authorizing funds for the Small Business Administration's programs for FY 1989 at FY 1988 authorization levels, with the exception of Surety Bond Guarantees and the salaries and expense account. To allow the Committee to promptly review any administrative changes which may occur following the beginning of the new Administration in January, 1989, the Committee elected to reauthorize SBA programs for a one-year period.

1. Program Levels

(a) *Direct loans.*—Section 101 of the bill authorizes the agency to make $75 million in district and immediate participation loans to small businesses. Of that sum, SBA is authorized to make $20 million in loans to organizations for the handicapped or to assist any handicapped individual in establishing or operating a small business, $30 million in loans to small businesses or qualified individuals seeking to establish a small business located in urban or rural areas with high proportions of unemployment or low-income individuals (otherwise known as economic opportunity loans), and $25 million in loans to disabled veterans or Vietnam-era veterans.

Although the total funding level for all direct loan programs has been frozen at the FY 1988 level of $75 million, the individual program levels have been reallocated to more accurately reflect the actual use of program funds. The authorization for handicapped

and veterans loan programs were each raised $5 million over the FY 1988 levels because applicants have consistently made full use of those program funds. Together, those changes represent the $10 million reduction in the FY 88 authorization level for the economic opportunity loan program, which has recently not received enough applications requesting those funds to utilize the full authorization amount. The Committee is aware that the Appropriations Committees have been unable to fund these loan programs fully at the authorized levels, but it is expected that appropriations will reflect roughly the proportions of the authorization.

(b) *Guaranteed loans.*—Section 101 also provides that all SBA guaranteed loan programs will be authorized at FY 1988 levels. Of a total loan guarantee authority of $3.320 billion, SBA is authorized to guarantee $5 million in loans to the handicapped, $65 million in economic opportunity loans, and $450 million in loans and guarantees of debentures under the Certified Development Company Program authorized in section 504 of the Small Business Investment Act of 1958.

Further, Section 101 authorizes SBA to make $75 million in guaranteed loans under a new provision of section 7(a) of the Small Business Act for the purpose of financing the planning, design or installation of pollution control facilities as originally provided for in section 404 of the Small Business Investment Act. The pollution control program has thus been transferred to the regular guaranteed business loan program rather than retained as a separate financing program. The Committee's decision was based on the high costs of operating the individual financing program under the Small Business Investment Act and the very small number of pollution control loans made in recent years. The exchange in funding authority thereby increases the total guaranteed loan program level from $3.245 billion to $3.320 billion, but it does not raise the total guarantee authority amount above 1988 levels in that no funds are authorized for the previous pollution control loan program.

Section 101 authorizes the agency to make $41 million in direct purchases of Minority Enterprise Small Business Investment Company [MESBIC] debentures and preferred securities, and to make $272 million in guarantees of Small Business Investment Company [SBIC] debentures. These amounts also reflect FY 1988 levels.

c. Surety Bond Guarantee Program—Section 101 authorizes SBA to enter into guarantees under the Surety Bond Guarantee Program provided for in Title IV, Part B of the Small Business Investment Act of 1958 not to exceed $1.4 billion. That amount represents an increase over the FY 1988 program level of $1.25 billion. The increase was made necessary by the new preferred surety program added by Title II of this Act, and by the ever-increasing demand for surety bond guarantees. The House Committee has reported H.R. 4174 authorizing $1.6 billion in guarantee authority for this program.

3. Appropriation levels

Section 101 further authorizes that such sums as may be necessary to carry out SBA programs may be appropriated to the agency for FY 1989, including $18 million for the Surety Bond Guarantee

Program and $248 million for salaries and expenses of the agency. Differing from prior years' practice, the Committee included no total appropriation estimate in Section 101, as the judgment of amounts necessary to safely fund the Business Loan and Investment Fund and the Disaster Loan Fund is best left to the Appropriations Committee, based on current data regarding defaults, collection rates and the economic forecast.

Finally, the authorization for payments of losses to be made out of the Pollution Control program revolving fund, as provided for in section 405 of the Small Business Investment Act of 1958, has been omitted in Section 101 because that revolving fund has been repealed by Section 107 of this bill. In the future, those payments will be made out of the agency's Business Loan and Investment Fund (BLIF). Section 107, discussed below, also provides for the remaining balance of the pollution control fund to be paid into BLIF. Section 101 provides that the $75 million in pollution control guarantee authority which had been available under Section 405 will be transferred to the regular guaranteed lending authority under Section 7(a).

(a) Surety bonds.—The authorization for appropriations for the Surety Bond Guarantee Program has been increased $5 million over the FY 1988 level to $18 million to cover the increased outlays expected by SBA under the new preferred surety program provided for in Title II. This relatively small outlay allows for a $150 million increase in badly needed surety bond guarantee authority.

(b) Salaries and Expenses.—Section 101 authorizes $248 million to be appropriated for salaries and expenses of SBA. This is an increase over the FY 1988 appropriated amount of $216.2 million under H.J. Res. 395, the FY 1988 continuing appropriations bill. The actual base line for FY88 is considerably higher than $216.2 million in that the supplemental appropriation measure requested by the agency, and now pending in the House, contains approximately $12 million in additional funding for salaries and expenses. The Committee believes that the evident problems in the MSB/COD program which are outlined in detail in the Commitee's report to accompany S. 1993, as well as the agency's need to increase efforts to help more small firms enter export markets, amply justify these increases in spending. The agency will face significant new increased costs for the cost of living adjustment anticipated in January, 1989, and increased outlays to other government agencies for office space, telephone service, and postage, as well as the Federal Employees Retirement System. In addition, the Commitee provided for increased expenses expected in connection with the passage of legislation reforming SBA's Office of Minority Small Business and Capital Ownership [MSB/COD] Development and Office of International Trade.

SMALL BUSINESS INVESTMENT COMPANY PROGRAM

1. Audit procedures

Section 102 requires the Small Business Administration's Inspector General to audit each Small Business Investment Company [SBIC] not less than every two years, rather than annually as now required, and allows the Inspector General to waive the audit re-

quirement for one additional year if the SBIC is well-managed and meets certain qualifications listed in section 102. The Inspector General has urged the Committee to allow for a more lenient SBIC audit schedule and greater discretion on his part, explaining that the annual audits consume over half of the office's audit resources to the detriment of other important SBA programs. The Committee did not fully accede to the IG's request that he be allowed to detemine an appropriate periodic audit schedule for all SBIC's, but the Committee concludes that the two-year schedule is adequate to protect the public interest and will certainly be less burdensome for the SBIC industry.

2. Quarterly debenture issuances

Section 103 requires the agency to provide for the issuance of SBA-guaranteed SBIC debentures in the capital markets at least quarterly. The Committee is concerned that the sporadic and sometimes delayed issuances of these securities has contributed to increased borrowing costs and relatively lower program participation for SBIC's. If, during any one quarter, it is determined that the issuance should be delayed in order to achieve an improved market status for the debenture pool to be sold, then it is intended that section 103 would allow the quarterly issuance requirement to be waived after consultation with the SBIC industry representatives and the SBIC Funding Corporation. The House bill, H.R. 4174, provides for issuances of these securities every six months. The Committee does not believe that a semi-annual issuance requirement would constitute a substantial improvement over SBA's current practice.

ECONOMIC DEVELOPMENT COMPANY PROGRAM

1. Alter-ego provision

SBA regulations now require that the ownership interest in the property to be financed by a development company loan and the ownership interest in the small business concern be identical. This regulation has prevented a number of meritorious projects from receiving financing. Section 104 allows SBA to issue guarantees on development company loans to a small business even though the business is owned in part by a closely related party, including a father, mother, son, daughter, brother or sister. Both the development company industry and SBA's Office of Economic Development have agreed to this change.

2. Section 502 debenture pooling

Section 105 allows state and local development company loans made under the authority of section 502 of the Small Business Investment Act of 1958 to be pooled and sold in the secondary markets as are section 504 development company debentures (see explanation of the section 504 program below). The development company industry has also recommended this change in light of the success of the section 504 debenture pooling program. It is intended, however, that section 502 loans would be pooled separately from section 504 debentures, as the two would be valued differently in the capital markets.

3. Permanent extension of section 504 pilot program

Public Law 99-272 established a pilot program under which section 503 certified development company guaranteed debentures are sold to private investors in the capital markets rather than to the Federal Financing Bank. The pilot program, incorporated into section 504 of the Small Business Investment Act, also authorizes SBA to pool these debentures and issue pass-through certificates evidencing ownership in all or part of the pool. Under prior law, the debentures were sold to the Federal Financing Bank. Continuation of the pilot program's sale in the private markets permits the certified development company program to continue operations at current program levels while achieving significant budget savings by replacing Federal funding with a private funding mechanism.

On October 9, 1987, SBA issued a favorable report on the pilot program, calling it a very successful program and recommending that it be made permanent. Section 106(a) makes the technical changes necessary to make the section 504 pilot program a permanent program. This change is also supported by the development company industry.

4. Maximum Interest Rate

Section 106(b) authorizes the SBA Administrator to establish a maximum legal interest rate on the bank or commercial lender portion of the development company loan package which will override state law and control all legal disputes.

Under section 504 of the Small Business Investment Act, certified development companies (CDC's) assist small businesses seeking long-term financing for the acquisition, construction or expansion of facilities. A local lender provides 50 percent of the financing, the CDC or small business provides 10 percent of the project cost, and an SBA-guaranteed debenture issued by the CDC finances the remaining 40 percent of the project. Debentures are issued for 10- or 20-year periods and carry interest rates slightly above comparable Treasury Department securities. As a *quid pro quo* for SBA's guarantee of 40% of the project cost, a conventional lender must make a 10-year commitment to the small business. Moreover, SBA takes a secondary position as lien holder.

Under current law, SBA is authorized to set a maximum permissible interest rate on its section 504 guaranteed debentures. SBA has similar authority to establish a unform maximum interest rate for Small Business Investment Company [SBIC] loans to small businesses under section 303 of the Small Business Investment Act of 1958. The SBIC loan rate is adjusted quarterly by the agency. For general business guaranteed loans under section 7(a) of the Small Business Act, SBA promulgates a maximum legal interest rate, but state law may require a lower rate. SBA has no such authority currently with respect to the commercial portion of the section 504 loan package and some state usury laws hamper the ability of CDC's to make loans in those states. This problem occurs when either the interest rate on the qualified debentures exceeds the state usury limit, or when the state usury law forces local lenders to decline to commit to a 10-year loan contract, as is required in section 504 program, or both.

The Congressional purpose of encouraging long-term, fixed rate financing for growing small business is thereby frustrated by some local lending laws, and those states are not receiving appropriate benefit from this successful program. Because bank participation in this program would likely not exist at all without SBA's guarantee assistance and SBA's agreement to take a secondary position as lien holder, it is reasonable to apply a uniform interest rate to a program offered nationwide. This should help assure a more equitable distribution of program benefits nationally.

The agency is directed to establish and publish quarterly a maximum interest rate that is reasonable and will not reduce local commercial lender participation in the program. SBA should consider all appropriate factors, including the risk to the lender, geographic variations in interest rates and the existing maximum rates applicable to other SBA guaranteed lending programs, including the section 303 SBIC debenture program. Further, SBA should consider interest rates currently charged by local lenders on their portion of the development company loan package.

Because this new authority is intended to be established on a pilot basis to allow the Committee and SBA to review its impact on participation in the 504 program, section 106(b) includes language to repeal this new authority on October 1, 1990. The Committee will monitor the impact of this change on program administration between enactment and 1990, at which time Congress could conclude to extend the program. Obviously, expiration of this authority after October 1, 1990, will not affect the validity of agreements entered into while SBA regulations under this provision are in effect.

Section 106(c) corrects a typographical error.

LEASE GUARANTEE REVOLVING FUND

In accordance with SBA's request, Section 107(a) of the bill provides for repeal of the Lease Guarantee Revolving Fund created by section 403 of the Small Business Investment Act of 1958. New activity in this program has not been funded for several years. Future losses will be paid out of SBA's Business Loan and Investment Fund (BLIF), and the balance of the Lease Guarantee Fund will be paid into BLIF. The lease guarantee program will remain in statute in the event that a future Congress elects to reactivate it.

POLLUTION CONTROL FINANCING

Section 107(b) repeals the statutory revolving fund created by section 405 of the Small Business Investment Act of 1958. This fund has been used to finance pollution control facilities under a program in which SBA-guaranteed securities were marketed to investors. The program has not been effective in recent years, in part because of the rather large, 3.5 percent guarantee fee charged to borrowers by SBA. Additionally, the prices of the securities have been inordinately high in comparison to either comparable Treasury issues or other government-guaranteed paper. Future losses from this program will also be paid out of SBA's Business Loan and Investment Fund, and the balance of the Pollution Control Fund will be paid into BLIF. This change has been also supported by

SBA in discussions which the Committee staff has held with program officials.

There remains a need, however, for small businesses to finance new pollution control facilities which have been mandated by recent Federal and state environmental legislation. The Committee has concluded that this need can better be met through the section 7(a) guaranteed loan program than through the existing pollution control program. Hence, the $75 million in authority for pollution control financing guarantees which had been available under section 404 of the Small Business Investment Act has been transferred to the section 7(a) guarantee authority, and provision has been made for guaranteed loans for pollution control financing under that section.

In addition to lower financing costs, this method of financing such facilities will be available through SBA district offices throughout the country rather than through the SBA Central Office as had been the case under section 404. Further, in light of the high cost of pollution control equipment, the Committee has provided that pollution control loan guarantees may be available for up to $1 million as opposed to the $750,000 limit which obtains for guaranteed loans under other provisions of the bill.

INTERNATIONAL TRADE

Section 108 incorporates the entire Small Business title of the Omnibus Trade and Competitiveness Act of 1988 (Title VIII of H.R. 3) as agreed to in conference (H. Rept. 100–576). Section 108 will be deleted from the bill if H.R. 3 or subsequent trade legislation containing these provisions is enacted into law.

BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Section 109 amends the Small Business and Federal Procurement Competition Enhancement Act of 1984 to improve the ability of Breakout Procurement Center Representatives (Breakout PCR's) to bring competition into the Department of Defense spare parts contracting program. That law states that Breakout PCR's are to have access to the unclassified procurement records and other data of the procurement center. Since many procurements contain some classified data, the current wording of the law prevents Breakout PCR's from gaining access to needed data in a timely manner. Subparts 1 and 2 of Section 109 resolve this problem by modifying the law to allow a Breakout PCR access to classified data up to the limit of his or her security clearance.

Although the 1984 Act allows Breakout PCR's to appeal unfavorable procurement decisions, this appeal process does not suspend the procurement during the pendency of the appeal nor is it limited to the procurement activity to which the Breakout PCR is assigned, as is the procedure under the Federal Acquisition Regulation. To enable the contracting process to proceed competitively during such an appeal, subpart 3 of Section 109 modifies the appeal process to suspend the procurement during the appeal and authorizes the service Secretary or the head of the Defense agency involved to make the final decision on the appeal.

Under current law, SBA is required to assign one Breakout PCR and at least two small business technical advisors to each major procurement center, i.e., a center that received at least $150 million in contracts other than for commercial items in the preceding fiscal year. Breakout procurement opportunities are not always sufficient at some centers to justify the employment of three full-time staff. Therefore, subpart 4 of Section 109 allows the Administrator to modify staffing levels based on the number of procurement opportunities at a given center and the need to achieve budgetary savings. This and the other provisions in section 10 are consistent with SBA's FY 1986 report to Congress on the Breakout PCR program.

PRIVATE SECTOR COOPERATION

Section 110 extends for two more years SBA's authority for a private sector cooperation program under which it cosponsors training and managerial assistance-type events with private, for profit businesses. This program was originally authorized by the Small Business and Computer Security Act of 1984, and the extension was requested by SBA, which believes the program has been successful. This section, however, modifies current law to make it clear that all SBA programs participating in a cosponsored activity shall receive appropriate recognition. Section 110 further requires that SBA shall receive appropriate recognition in all such events and ensure that no endorsement of any elected official is made or implied.

Although current law requires SBA to ensure that its cosponsored activities do not constitute or imply an endorsement by the agency of the products or services of the cosponsor, Section 110 extends that requirement to any activity which SBA cosponsors with a Federal, state or local public official or agency. The Committee was particularly concerned that SBA has cosponsored certain events with public officials, including "Senator Campbell's Conference for Women" in California recently, in which the public official received greatly disproportionate recognition on printed materials and in the cosponsored activities while SBA's programs and activities went unmentioned.

The issue of Senator Campbell's conference was discussed at the Committee's budget hearing on March 22. The Administration indicated that it had expended at least $60,000 for postage and printing for the 1988 Conference. The Administration has yet to furnish, as requested during the March 22 hearing, a full accounting of *all* its expenditures in connection with not only the most recent but all previous conferences which the Administration has held for Senator Campbell. This report shall be submitted to the House and Senate Small Business Committees within 30 days of enactment of this Act.

REPORT ON BACKGROUND CHECK POLICY

Section 111 requires SBA to submit a report to the House and Senate Small Business Committees within 90 days of enactment of this bill regarding its current and future policy requiring criminal history background checks to be made on loan applicants, licensees,

directors and other SBA program participants. To ensure that all SBA program participants and recipients of SBA assistance have the good character to participate in SBA programs or ability to repay the agency for its financial assistance, SBA has historically required that criminal history name checks on most applicants and participants be made through the criminal files at the Federal Bureau of Investigation. Due to computer technology advances, the FBI will no longer provide name check services to any federal agency, but will require the applicant's fingerprints to access the Bureau's criminal files.

The Committee staff held a series of meetings and discussions with representatives from the FBI and SBA on the issue in light of SBA's concern about instituting a fingerprint requirement. Both the agency and the Committee are concerned that wide-ranging requests for fingerprints from individuals who are under no suspicion of wrong-doing have ominous implications for both the privacy of individuals and the public image of the agency.

The FBI indicated that criminal history files could simply not be accessed in the future without fingerprints, but the Bureau did agree to withhold implementing the new policy for SBA until April 1, 1988. Since that date, the Committee has heard valid complaints from participants in the certified development company program regarding the requirement that CDC officers and directors be fingerprinted. Many of these directors are local elected officials who serve voluntarily and without compensation. More complaints from other programs are expected as the policy is implemented. The Committee questions SBA's alleged need to obtain background checks on such officers and other program participants who may serve on a volunteer basis and are well-known in the local community. Therefore, Section 111 requires SBA to revaluate the need for a criminal record check on all program participants and report its findings to the Committee. The agency's new policy should take into account the relative risk involved with different programs and participants, including the magnitude of SBA's financial exposure, as well as the privacy interests of participants. SBA should consider and evaluate the approaches to these issues by other federal agencies which have similar financial programs.

[NOTE.—Sections 112 and 113 and Title II of the bill are discussed below under "Committee Amendments."]

TECHNICAL AMENDMENTS

Section 114 changes the titles of the Associate and Deputy Associate Administrators for the Small Business Development Center Office as requested by SBA.

REGULATIONS

Section 115 requires SBA to establish regulations implementing this Act within 6 months of enactment.

SMALL BUSINESS USE OF ADVANCED TECHNOLOGY MANUFACTURING EQUIPMENT

The Senate Small Business Subcommittee on Innovation, Technology, and Productivity is examining small business use of ad-

vanced technology manufacturing equipment. Subcommittee hearings (See S.Hrg. 100–455, Parts 1 and 2) on this issue produced testimony that explained how the United States' manufacturing base is eroding because small businesses have been slow in adopting advanced technology manufacturing processes. One of the main barriers to increased small business use of advanced technology manufacturing equipment is the lack of financing alternatives for this equipment.

Therefore, within nine months after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit a written report to the Committees on Small Business of the Senate and the House of Representatives that analyzes the extent to which targetting Small Business Administration lending programs to applications for advanced technology manufacturing equipment will increase small business use of that equipment. This report will include recommendations from the Administrator on the adequacy of existing financing options for such purposes and whether Small Business Administration lending programs should be targeted in this way.

III. Committee Amendments

During the May 17 markup on this reauthorization measure, the Committee agreed to modify the Committee bill by three amendments. The Committee approved the inclusion of language first, to reauthorize certain expired provisions of law allowing rehabilitation facilities for the blind and other severely handicapped to bid on small business set-aside contracts; second, to amend SBA's disaster loan program to allow for larger unsecured disaster loans and to allow disaster loan recipients to make improvements to their property to mitigate against future disaster damage; and third, to amend SBA's surety bond program to authorize "preferred" sureties to issue and service SBA-guaranteed loans. These amendments were incorporated into the bill as Section 112, Section 113, and Title II, respectively.

AMENDMENTS RELATING TO PROGRAMS FOR THE BLIND AND HANDICAPPED

To Extend the Authorization for Not-For-Profit Organizations Operated in the Interest of Handicapped and Blind Individuals to Receive Procurement Contracts Under the Small Business Act

The Committee accepted as amendment offered by Senators Weicker, Kerry, Harkin and Pressler authorizing sheltered workshops to compete in the small business set-aside procurement program. This amendment was identical to a bill, S. 2147, that was reported out of this Committee and unanimously passed the full Senate in the 99th Congress.

The proposal has an extensive legislative history and was significantly changed last Congress in an effort to strike a balance between the interests of assisting handicapped individuals and small business. See Senate Report 99–318.

Specifically, Section 112 would:

—reauthorize a law allowing rehabilitation facilities to bid on small business set-aside contracts;
—establish a maximum ceiling of $50 million of contracts that these rehabilitation facilities can be awarded;[1]
—permit only $8 million of the $50 million annual ceiling of contracts be converted to the Javits-Wagner-O'Day Act program;
—establish a five year sunset provision;
—provide small businesses with an expedited appeal to the SBA Administrator when they allege that they will suffer economic hardship from an award to a rehabilitation facility; if the appeal has merit, the Administrator may require contracting activity to take appropriate action;
—require the General Accounting Office to study and report back to Congress on the impact of the bidding by rehabilitation facilities before the program could be extended.

This provision has the support of the National Association of Rehabilitation Facilities, National Easter Seal Society, Association for Retarded Citizens of the United States, United Cerebral Palsy Associations, National Association of Jewish Vocational Services, National Industries for the Severely Handicapped and Goodwill Industries of America.

DISASTER LOAN PROGRAM

Section 113 of the Committee bill incorporates the amendment offered by Senator Dixon to make two changes in the agency's disaster loan program. First, Section 113 increases the unsecured loan amount SBA can offer a disaster victim from $5,000 to $10,000. SBA has not revised its regulations regarding unsecured loans since the late 1970's.

Secondly, Section 113 would authorize SBA to increase the disaster loan amount up to an additional 20 percent if it determines that such additional financing for making improvements to the property would be necessary to mitigate against future disaster damage such as floods, which tend to recur. Such improvements may include construction of retaining walls or sea walls, grading or contouring of land and relocating utilities. Currently, SBA authorizes disaster financing to be used for replacing or repairing damaged property, but not for upgrading the property unless it is necessary to maintain minimum safety standards or is required by local ordinance (e.g. flood insurance requirements).

PREFERRED SURETY BOND PROGRAM

Background and Need for Legislation

The SBA Surety Bond Guarantee Program was created in 1971 to provide the assistance needed for small firms to obtain necessary bonding. Especially in construction, small firms must have access to performance bonds, payment bonds, and bid bonds if they are to have the opportunity to compete for Federal construction contracting opportunities, state and local government projects, and increasing numbers of private commercial jobs. Under the Miller Act (40 U.S.C. 270a), a Federal contractor must furnish a performance bond and a payment bond on each construction contract exceeding

[1] In Fiscal Year 1987, approximately $17 billion of contracts were set-aside for small business.

$25,000. Under the so-called "little Miller Acts", and related regulations, most construction contracts by State and local governments require the contractor to provide bonds. In addition, commercial purchasers of construction are being urged to require bonds of their contractors, and concurrently, prime contractors are being encouraged to require bonds from their subcontractors on both governmental and commercial projects. Because small businesses traditionally have found it difficult to obtain bonding in the commercial marketplace, Congress established the SBA Surety Bond Guarantee Program to assure small business participation in the Federal procurement market for construction, and in other markets which require bonding.

Part B (Surety Bond Guarantees) of the Small Business Investment Act of 1958 (15 U.S.C. 694a) authorizes the SBA to guarantee any participating surety company against as much as 90 percent of any loss incurred by the firm on a bond issued to an eligible small business. Under current law, SBA reviews and approves the bond application of each small business before the surety firm can issue the bond with the SBA guarantee. SBA also approves each transaction regarding administration of the bond, including payments on claims.

By regulation, SBA has reduced the guarantee to 80 percent to provide more contract coverage within the available guarantee authority, which is currently limited to $1.15 billion. For the same reason, the size of the contract for which a guaranteed bond can be issued cannot exceed $1,250,000. Since the inception of the program in 1971, over 200,000 contracts, valued at more than $17 billion, have been awarded to small firms with SBA-guaranteed bonds.

Initially, the so-called "standard" surety firms, the very largest players in the surety bond market, participated in the Surety Bond Gurantee Program, but their participation declined rapidly and is virtually negligible today. A group of "specialty" surety companies emerged to fill the void created by the departure of the standard surety firms from the program.

One primary reason given for the departure of the standard surety companies from the Surety Bond Guarantee Program was the costs and administrative burdens associated with the process used by SBA to review and approve, on a transaction-by-transaction basis, the underwriting and administration of the SBA-guaranteed bonds. In addition, the standard sureties preferred not to have their business judgments "second-guessed" by SBA employees too often new to the surety business.

After some revealing oversight hearings conducted in 1982 under the leadership of Senator Lowell Weicker, then Chairman of the Committee, SBA invited The Surety Association of America, representing the standard surety companies, to suggest ways to encourage the return of these firms to the program. The result of those discussions was the development of a proposal, referred to as "Plan B", or the Preferred Surety Bond Guarantee Program.

Plan B formed the basis for S. 2259, the "Preferred Surety Bond Guarantee Program Act of 1988", which was introduced by Senator Sam Nunn on March 31, 1988. The Chairman and Ranking Minority Member of the Committee, as well as Senator Boren, were original cosponsors. The bill was also requested by the Administration.

The bill created, on a three-year pilot basis, a Preferred Surety Bond Guarantee Program ("Program"), similar to the Preferred Lender Program already in place for SBA's Guaranteed Loan Program. Under the Program, firms obtaining "preferred surety" status would be freed from SBA prior approval of each decision relating to the issuance and administration of a guaranteed bond. SBA would only approve the firm's standards and procedures for bond underwriting and administration, including claims. Individual actions by the firm relating to the issuance or administration of a guaranteed bond would be handled without any prior approvals from SBA, presumably in the same manner as the firm's bonding activity outside of the Program.

To protect the taxpayer, the Committee expects that surety bond companies seeking "preferred surety" status would be required to meet a stringent set of qualification standards to be prescribed by SBA. These standards should be more rigorous than those required of firms participating in the existing surety bond program, but not so restrictive as to exclude adequately capitalized and well-managed firms from the ranks of the specialty surety companies presently meeting the bonding needs of small firms through the existing program.

To further protect the public, it is expected that the SBA regulations will permit a prompt suspension of a firm's preferred surety status upon a finding of violations of the firm's approved bond underwriting or claims procedures or of SBA program regulations, or that the firm no longer qualifies for preferred surety status. Participants in the Program would also be subject to regular annual audits, in addition to the reporting and access to records requirements applicable to any surety firm issuing a bond with an SBA guarantee.

As a measure of their confidence in their own under writing standards and claims decisions, the standard surety firms have expressed a willingness to accept a reduced level of Government guarantee under this proposed program, thus exposing them to larger risk of loss in exchange for removal of SBA's prior approval. Under the Program, the maximum guarantee would be 70 percent, rather than the 80 percent allowed under current regulations for the existing surety bond program.

In addition to establishing the pilot a Preferred Surety Bond Guarantee Program, S. 2259 makes several improvements to the existing program. It establishes a 90 percent guarantee applicable to bonds for contracts of $150,000 or less, or any program guaranteed bond issued to a firm owned and controlled by socially and economically disadvantaged individuals. The Committee expects that these higher guarantees will encourage participating sureties to provide bonding to small business concerns on smaller projects, and to meet the needs of disadvantaged small business concerns which have historically faced discrimination in obtaining needed surety bonding.

Other provisions of the bill are designed to facilitate the operation of the Surety Bond Guarantee Fund as a revolving fund without fiscal year limitation, as specified in Section 412 of the Small Business Investment Act of 1958 (15 U.S.C. 694c), thereby eliminating one of the principal impediments to effective use of the $1.25

billion presently authorized for bond guarantees. In addition, the bill clarifies the relationship between the special, reduced, size standard established for participation by small business concerns in the surety bond program and SBA's generally applicable size standards which define a firm as a small business.

On April 12, 1988, the Committee conducted a hearing on S. 2259, chaired by Senator Nunn. Testimony supporting the concept of a Preferred Surety Bond Guarantee Program was received from representatives of the surety industry and the construction contracting community, including the Surety Association of America, the American Surety Association on behalf of the specialty surety firms, the National Association of Minority Contractors, and the American Subcontractors Association.

Supporting testimony and useful suggestions for improving the bill's provisions were presented by the Small Business Administration's representatives. The basic elements of a Preferred Surety Bond Guarantee Program are contained in the Administration's legislative program for the SBA accompanying the budget submissions for both Fiscal Year 1987 and Fiscal Year 1988. SBA does, however, oppose the bill's provisions providing or a 90 percent guarantee for disadvantaged small business concerns, clarifying the size eligibility of Program participants, and requiring annual audits of preferred sureties.

During the Committee mark-up held on May 17, 1988, Senator Weicker offered an amendment to this authorization bill on behalf of Senator Nunn, for himself and Senators Bumpers, Boren, and Dixon, which incorporated a modified text of S. 2259 as Title II of this bill. The amendment reflects several significant improvements to the original text of S. 2259 which are based on the testimony received from SBA, representatives of the surety industry, as well as representatives of small business and disadvantaged small business construction community. The amendment was unanimously adopted by the Committee on a voice vote.

MAJOR PROVISIONS OF THE LEGISLATION

Section 202. Authority of the Administration

The SBA Surety Bond Guarantee Program currently assists small business concerns to obtain required bonds by guaranteeing a surety company against 80 percent of any potential loss incurred on the bond if the issuance of the bond has been approved by SBA. The guarantee agreement also requires SBA approval for each transaction pertaining to administration of the bond, including those relating to claims.

This section provides for the creation of a pilot Preferred Surety Bond Guarantee Program ("Program"). A firm recognized as a preferred surety bond company would be authorized to issue and service bonds to eligible small business concerns with the SBA guarantee, using its own underwriting, bond administration, and claims procedures. SBA prior approval of each transaction would not be required.

The Committee received testimony from the Surety Association of America (SAA), which represents the large surety bonding firms, the so-called "standard sureties," strongly recommending that

"preferred surety" status should only be accorded to firms that meet stringent qualification standards. The Department of the Treasury regulates surety companies providing bonds to be used to meet statutory or regulatory requirements for corporate surety bonds on Federal construction contracts and contracts for other services. To offer acceptable bonds, the surety company must obtain a certificate of authority from the Secretary of the Treasury by meeting the requirements contained in Part 223 (Surety Companies Doing Business with the United States) of Title 31, Code of Federal Regulations. Each July 1st, the Department publishes a list of approved surety companies in its Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), commonly referred to in the construction industry as the "Treasury List." Any surety company on the Treasury List is eligible to participate in the SBA Surety Bond Guarantee Program.

The testimony of SAA's witness further stressed that future SBA regulations must provide for prompt suspension of such preferred surety status if the firm fails to continue to meet the qualification standards or is found to have exercised its authority improperly. Under the proposed Preferred Surety Bond Guarantee Program, such firms will themselves be authorized to provide the Government's guarantee to the bonds issued, essentially committing public funds in the event that there is a default and the bond must be paid. As Lloyd Provost, President of The Surety Association of America, stated,

> Only private companies with impeccable credentials should be granted this trust.

The Committee agrees and fully expects that the regulations implementing the Program will establish more stringent qualification standards than those required of firms participating in the existing surety bond program. Further, the regulations should afford SBA the authority to temporarily suspend a firm's preferred surety status upon a finding that the firm no longer meets the qualifications for such status, or has failed to comply with its own underwriting, bond administration or claims procedures or SBA regulations regarding the issuance or servicing of bonds bearing the SBA guarantee. A suspended firm should be promptly afforded an opportunity to demonstrate to SBA that suspension is unwarranted and should be lifted.

During the legislative hearing, the SAA outlined suggested qualifications for participation in the Program, representing the understanding of SAA's members regarding the expected implementation of the Program upon which the participation of these firms is predicted. In fashioning the standards which a surety firm must meet in order to attain "preferred" status, the Committee urges that the recommendations of the SAA be carefully considered. At the same time, the qualification standards should not be drawn so restrictively as to exclude all specialty surety companies presently participating in the existing surety bond program from attaining preferred surety status.

The SAA urges that the SBA regulations for participation in the Program should reflect the following requirements:

(1) "maintain a certain underwriting limitation on the U.S. Treasury Department List of acceptable sureties." An underwriting limitation of $5 million is contemplated;

(2) "agree to . . . pay a higher percentage of premium" to the SBA than under the existing Surety Bond Guarantee Program;

(3) acquire an agreement by the preferred surety firm and its agents that only the standard premium rates will be charged to small businesses obtaining bonds under the Program:

(4) "maintain a permanent in-house claims department satisfactory to SBA";

(5) "maintain fully staffed branch and home office underwriting departments which write most of their contract bond business outside the SBA (Surety Bond Guarantee) Program." The objective of this requirement is to assure that the firm will be in the position to readily provide bonding to qualified contractors who have graduated from the SBA Surety Bond Guarantee Program. However, the Committee is not convinced that this objective cannot be attained unless the firm's portfolio reflects a "majority" of non-SBA guaranteed bonding business, i.e. more than 50 percent. A lesser percentage may be sufficient to attain this objective without being an artificial barrier to otherwise qualified surety firm's already participating in the existing surety bond program; and

(6) "agree that no underwriting authority would be vested in any agent or producer but rather given only to employees of the surety company, thereby eliminating the conflict of interest which exists when the same party produces and underwrites business." The objective of this requirement is to eliminate from "preferred" status any firm that makes use of managing general agents. The Committee is aware that this requirement will have the effect of eliminating the majority of the specialty surety firms currently participating in the existing surety bond program. In formulating its regulations, SBA must be certain that such a blanket prohibition is the only means of addressing SAA's concerns.

In fact, it has been suggested by others from the minority business community who would like to dramatically improve the access to bonding of disadvantaged small business contractors that SBA should conduct a test of a pilot bonding expansion program in one of its regions using a managing general agent. The suggested pilot program envisions the creation of an association organized by several of the preferred sureties, and its use of a managing general agent which would focus its underwriting efforts on the needs of disadvantaged small business construction firms. The Committee urges the SBA to give this concept consideration in formulating its overall plans for the implementation of the pilot Preferred Surety Bond Guarantee Program. If a test of the concept is undertaken, it is expected that its effectiveness in expanding the bonding opportunities for disadvantaged small business concerns will be included in the GAO review of the Program.

Finally, this section clarifies the conditions under which a participating surety firm may issue a bond with the SBA guarantee.

In this regard, much of the provision is a codification of existing SBA policy and practice.

Section 203. Indemnification

Subsection (a) of this section clarifies the extent of SBA's financial obligations under a guaranteed bond in the event that the surety company incurs costs seeking to assist the contractor to avoid a breach of the bonded contract. Sureties routinely step in to assist a company to avoid such a breach, on the basis that it is frequently less costly than having to pay on the bond after default. The surety may provide management and financial assistance to the contractor or may even step in and provide day-to-day management of the contract. The surety is authorized to take such actions to prevent default of a contract covered by an SBA-guaranteed bond, and can be reimbursed for those costs. Such costs cannot be reimbursed in an amount exceeding the guaranteed portion of the bond.

Subsection (b) of this section specifies the amounts of the maximum guarantees authorized under the proposed Program as well as under the existing program. The provision establishes two new bond guarantees applicable to "small contract" bonds and to bonds issued to disadvantaged small business concerns.

This subsection also sets a maximum guarantee level of 70 percent on bonds issued under the Program, that is, with the specific prior approval by SBA. From its inception, "Plan B" envisioned a reduced SBA guarantee in exchange for the preferred surety's delegation of prior approval authority by SBA.

The subsection also restates the maximum statutory limit of 90 percent for a guarantee under the existing program. By regulation, however, SBA has reduced the maximum guarantee to 80 percent to provide broader coverage under the existing guarantee authority.

Further, the subsection establishes a 90 percent guarantee in case of bond for a contract of $150,000 or less. Based on testimony that the bonding problems of small firms are magnified when the firm is seeking a bond for a small contract. Applications for bonds for small projects require essentially equal effort to evaluate as a bond for a larger project. Given that the bond premium structure in the surety bond market is based on the dollar value of the contract, surety companies find these "small contract" bonds significantly less attractive, especially when sought by a small business concern. The Committee anticipates that the required 90 percent guarantee will make the servicing of these smaller contracts more appealing.

To encourage firms participating in the Surety Bond Guarantee Program to increase their services to disadvantaged small business concerns, this subsection also provides for a higher guarantee for bonds approved for issuance to such firms. The provision requires a 90 percent guarantee on any bond issued to a firm owned and controlled by socially and economically disadvantaged individuals, as defined by section 8(d) of the Small Business Act. The subsection has been clarified to reflect the Committee's intent that bonds issued with these 90 percent guarantees will be subject to prior ap-

proval by the SBA, and will not be available under the proposed Program.

Finally, subsection (c) of this section amends the Small Business Investment Act of 1958 by placing additional limitations on SBA's liability to sureties participating in either of the bond guarantee programs. Under this subsection, SBA's liability under the guarantee would be relieved if: (1) a surety has breached a material term or condition of the guarantee agreement, or (2) a surety has substantially violated the regulations issued by SBA to implement the bond guarantee programs.

Section 204. Reports and Audits of Participating Sureties

This section clarifies the authority of the SBA to require reports from firms participating in both the existing program and the proposed bond guarantee programs, and to audit the records of such firms. It also requires an annual audit of firms accorded preferred surety status. In its testimony before the Committee, SBA expressed concern that its "manpower is insufficient" to undertake such annual audits. In response to SBA concerns, the provision makes clear that such annual audits need not be conducted by SBA personnel, but only by auditors "selected and approved" by SBA. It is contemplated that this requirement could be met through contract.

Section 205. Regulations

This section requires the SBA to issue final regulations to implement the amendments made by this title within 180 days after the date of enactment.

Section 206. Evaluation and Report

This section requires the General Accounting Office to monitor the implementation of the provisions of the "Preferred Surety Bond Guarantee Program Act of 1988" and to make a report to the Committees on Small Business of the Senate and the House of Representatives within three years after the date of enactment. The focus of the GAO evaluation is to determine if the two major objectives of the amendments have been accomplished; first, whether the standard surety companies have expanded their participation in the SBA Surety Bond Guarantee Program, and second, whether the expanded participation of the standard surety companies has improved the access to surety bonds for small business concerns, expecially disadvantaged small business concerns. The GAO evaluation is to be based upon the first two years of experience under the Program. While the Committee recognizes that such limitation may provide a test that is not fully conclusive, it will permit the identification of early trends and permit the GAO to complete its report prior to the statutory deadline, thus affording some time for appropriate Congressional action if the pilot program attains its objectives.

Section 207. Sunset

This section prescribes the termination date for the three-year pilot Preferred Surety Bond Guarantee Program. The termination date for the pilot program is September 30, 1991, or the last day of

the third full fiscal year after date of enactment, whichever is later.

Section 208. Miscellaneous Provisions

Subsection (a) of this section is designed to facilitate the operation of the Surety Bond Guarantee Fund as a revolving fund without fiscal year limitation, as specified in Section 412 of the Small Business Investment Act of 1958 (15 U.S.C. 694c). Presently, funds appropriated for the operation of the existing program are limited to a single fiscal year. The appropriated funds are required to cover the difference between the income under the program and the expenses incurred by losses on bonds guaranteed under the program. The need to obligate these appropriated funds to cover possible losses on outstanding bond guarantees has impaired SBA's ability to provide for new guarantees both during the final weeks of the fiscal year, and in the early days of a fiscal year during which the program is often covered by a short-term continuing resolution. The encumbered funds may not be needed, due to the subsequent release of the bond after completion of the contract, but they cannot be used to make new guarantees. The change made by this provision should help alleviate this problem which restricts the full utilization of the $1.25 billion authorized for bond guarantees.

Subsection (b) of this section clarifies the relationship between the general SBA size standards which define the maximum size a firm may attain and still be considered a "small business concern", and the special size standard used to further define eligibility to participate in the Surety Bond Guarantee Program. It makes clear that to participate in the program a firm must be a "small business concern" and concurrently not exceed the program's special size standard of $3.5 million in average gross receipts during the prior three years. This size standard was established administratively to focus the program on the smaller "small business concerns" providing the types of services for which bonding would generally be required, principally construction firms, and which were more likely to be in need of the SBA guarantee to obtain the required bonding. This lower size standard for eligibility has also helped to permit the program's authorized funding to assist a larger number of firms. All of the size standards otherswise applicable to firms providing construction services presently exceed the $3.5 million standard substantially. The current size standards are $17 million construction general contractors, $9.5 million for dredging contractors, and $7.0 million for the various specialty trade contractors (e.g., electrical, painting, and plumbing). The size standards for firms providing other types of services that may also require bonding are equal to or greater than $3.5 million.

On December 17, 1987, SBA issued a proposed regulation which would dramatically reduce the size standards for the standard industrial classification (SIC) codes that encompass the construction industry (Major Groups 15, 16 and 17). It was proposed to implement the size standard reductions mandated by Section 921 (Small Business set-asides) of the "National Defense Authorization Act for Fiscal Year 1987", Public Law 99-661. If the size standard reductions for the various SIC codes were to be implemented, the size standards for most of the SIC codes in construction would fall

below the Surety Bond Guarantee Program's $3.5 million standard for eligibility. Under such circumstances, it has been argued that a firm that does not qualify as a "small business concern" could nevertheless remain qualified for the small business assistance provided by the Surety Bond Guarantee Program by merely meeting the program's own $3.5 million eligibility standard. Such a result is contrary to Congressional intent that only small business concerns be eligible for any form of small business assistance.

MATTERS TO BE DISCUSSED UNDER SENATE RULES

A. COMMITTEE VOTE

In compliance with Rule XXVI(7)(B) of the Standing Rules of the Senate, the following vote was recorded:

On a motion by Senator Weicker and seconded by Senator Dixon, the Committee voted to report out of Committee the bill, as amended, to provide reauthorization for the Small Business Administration for Fiscal Year 1989. The Weicker and Dixon amendments were also agreed to, *en bloc,* by voice vote.

B. REGULATORY IMPACT STATEMENT

In compliance with Rule XXVI(11)(b) of the Standing Rules of the Senate, it is the Committee's belief that this bill will have no significant regulatory impact or privacy impact on the small businesses affected by the legislation, or on any individual.

C. COST OF LEGISLATION

In compliance with the Rule XXVI of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 24, 1988.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for the Small Business Administration Reauthorization and Amendments Act of 1988. This estimate supersedes the previous estimate transmitted on May 23, 1988 and corrects the description of the changes that would be made to the Breakout Procurement Center Representative Program.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Small Business Administration Reauthorization and Amendments Act of 1988.

3. Bill status: As ordered by the Senate Committee on Small Business, May 17, 1988.

4. Bill purpose: The bill would reauthorize Small Business Administration (SBA) programs for 1989 and would make a number of changes to existing SBA programs.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	1993
Function 370—Authorization level:						
Specified	9	275				
Estimated		269	25	123	99	37
Total authorization level	9	544	25	123	99	37
Estimated outlays		350	155	135	94	34
Function 450—						
Authorization level						
Estimated outlays		236	1	−40	−37	−35
Function 900—						
Interest to the Treasury			−8	−8	−10	−13
Bill total—						
Estimated authorization level	9	544	17	115	89	24
Estimated outlays		586	148	87	47	−15

In addition, the bill would authorize SBA business loan guarantees of $3.6 billion in 1989, which represent contingent liabilities of the federal government. Projections of defaults over the 1989–1993 period are included in the outlay estimates in the above table.

Implementation of the provision granting the Administrator of SBA greater flexibility in the assignment of breakout procurement center representatives could result in net savings of $20 million to $50 million annually. The extent to which such savings would reduce the deficit would depend on whether approprations were correspondingly reduced, and they are therefore not included in the above table.

Basis of estimate: This bill would authorize the SBA to make $116 million in direct loans and to guarantee $3.6 billion in loans to small businesses in 1989. The authorization levels shown in this estimate include amounts specifically authorized in the bill as well as the estimated amounts to fund the authorized loan and guarantee activity. The bill authorizes such sums as may be necessary to fund the disaster loan program, including a transfer from the disaster loan porogram to the salaries and expense account to cover the cost of administering the program. For purposes of this estimate, the amount of disaster loans is estimated based on historical data adjusted for inflation. We have included $93 million in 1989 for the amount transferred from the disaster loan program to pay for administrative expenses, which is the amount included in the CBO baseline. Because the transfer comes from unobligated balances, it does not require budget authority, but does increase outlays. Outlays for all the programs reflect historical spending patterns.

The SBA makes an annual interest payment to the Treasury based on its outstanding disbursements for direct loans. The pay-

ment to the Treasury reflects disbursements from the business and disaster loans programs in 1989. The interest payment represents an outlay to SBA but a receipt to the Treasury, and has no net budget impact.

Business programs: Outlays for SBA direct and immediate participation loans are calculated by assuming that these loans are disbursed over a two-year period based on SBA's historical disbursement rates. The repayment schedule is derived from SBA's repayment pattern for these programs. The estimated authorization levels in 1989 through 1993 reflect the resources required to fund the expenses of the funds, including direct loans and defaults on loan guarantees resulting from the authorizations in this bill. The SBA is assumed to purchase guaranteed loans that have defaulted in the first through the eighth years after disbursement by the bank, at rates consistent with historical experience.

Disaster loan program: The bill would permit SBA to increase the amount of a disaster loan up to an additional 20 percent for mitigation measures, and would increase the ceiling for unsecured disaster loans from $5,000 to $10,000.

Permitting SBA to increase the amount of loans up to an additional 20 percent for mitigation measures would have an uncertain impact on the federal budget. Under current law, SBA provides for some mitigation measures to conform to local code regulations. According to SBA, this funding of mitigation measures occasionally has exceeded an additional 20 percent of the loan amount. Enactment of this provision would limit the amount of such loan increases. The savings resulting from this limitation probably would be more than offset by new requests for increased loan amounts for hazard mitigation.

Based on information from SBA, we estimate that enactment of the provision increasing the ceiling for unsecured loans would have no significant budget impact. Some small additional costs might be incurred because recoveries from defaults of unsecured loans are generally lower than recoveries from defaults of secured loans.

Trade provisions: The bill would make a number of changes in the trade programs administered by SBA and would increase the maximum SBA-guaranteed financing available to individual borrowers under certain SBA programs. It would authorize the appropriation of $3.5 million in 1988 and in 1989 for SBA administrative expenses and for SBA to conduct a seminar on small business exports. The bill would also authorize the appropriation of $5 million in 1988 and in 1989 to expand the type of assistance provided by small business development centers.

In addition, the bill would increase from $500,000 to $750,000 the maximum SBA guarantee for certain business loans. It would create a new industrial mortgage loan program, authorizing SBA to guarantee loans of up to $1 million each for firms involved in international trade. Net defaults resulting from this loan guarantee program are estimated to total $65 million over the 1989–1993 period, and are included in the cost estimate table.

Procurement center representatives: The bill would make a number of changes to the Breakout Procurement Center Representative Program. The bill would give the Administrator of SBA greater flexibility in the assignment of breakout procurement center

representatives (BPCRs). In addition, the bill would grant additional authority to BPCRs in obtaining technical information and procurement records for the preparation of competitive solicitation packages. The bill would give greater appeal power of BPCRs in instances of disagreements with the contracting procurement agency.

Under present law, the Administrator of SBA is required to assign BPCRs to federal agencies so that there is one in each major federal procurement center that awarded contracts for items totaling at least $150 million in the preceding fiscal year. The principal responsibility of the BPCR is to serve as an advocate for the procurment of items and services through full and open, rather than limited, competition. The SBA estimates that, over the past several years, the BPCR program has resulted in savings to contracting procurement agencies of about $150 million annully. These savings were estimated by comparing the price of items bid competitively as a result of actions by BPCRs, to their price, adjusted for inflation, under a previous contract that was secured through limited competition.

Implementation of the provision granting the Administrator of SBA greater flexibility in the assignment of BPCRs would probably result in more items purchased each year through the breakout program than under current law. This could be accomplished by transferring certain BPCRs from major procurement centers where the program has proven ineffective to centers where the programs could be more effectively utilized. Based on discussions with SBA, and upon review of each major procurement center's annual breakout savings, we estimate that reassignment of BPCRs could result in a substantial number of additional items purchased competitively. Potential savings could range from $20 million to $50 million annually, largely in the Department of Defense. The extent to which such savings would reduce the deficit would depend on whether appropriations were correspondingly reduced.

Other provisions. This bill would make a number of other changes affecting SAB programs that we do not expect will have a significant budget impact. It would establish a preferred surety bond program, giving SBA authority to delegate approval of surely bond guarantees to certified surety companies. It would also increase the SBA guarantee from 80 percent to 90 percent on surety bonds of $150,000 or less and also on bonds issued to small businesses that are owned by minority or socially disadvantaged individuals. It is uncertain at this time whether these provisions would affect the loss rate for the program, which is now about 2 percent.

The bill would expand the secondary market in development company loans to include Section 502 guarantees, and would make permanent the Section 504 development company program.

The bill would require the General Accounting Office (GAD) to prepare a report in fiscal year 1992, describing the impact that contracts awarded to firms owned by the blind or severely handicapped have on for-profit small business concerns. This report would cost GAO about $200,000 in fiscal year 1992.

6. Financing mechanism: The disaster and business loan programs administered by SBA are largely funded by collections from loans. The business loan and investment fund also receives appropriations to make up the difference between its annual expenses

and income. Current law requires SBA to transfer interest income from its direct loans to the Treasury.

The bill would authorize SBA in 1989 to guarantee business loans of $3.5 billion, surety bonds of $1.4 billion, and pollution control loans of $75 million. The bill would allow SBA to make payments for losses incurred by the pollution control program and the lease guarantee program out of the business loan program. This accounting change would eliminate the need for separate revolving funds for each of these programs. Any remaining balances in the funds would be transferred to the business loan revolving fund.

7. Estimated cost to State and local government: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On May 23, 1988 CBO transmitted to the Senate Committee on Small Business a cost estimate for the Small Business Reauthorization and Amendments Act of 1988. This estimate supersedes the May 23 version and corrects the description of the changes made by the bill to the Breakout Procurement Center Representative Program. The estimated costs shown in the two estimates are identical.

In addition, CBO prepared a cost estimate for H.R. 4174, as ordered reported by the House Committee on Small Business, April 28, 1988. H.R. 4174 authorized SBA progress through 1991, and made other changes in SBA programs not included in this bill.

10. Estimate prepared by: Mary Maginniss and Douglas Criscitello.

11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director, for Budget Analysis.

D. CHANGES IN EXISTING LAW

In compliance with rule XXVI (12) of the Standing Rules of the Senate, changes in existing law made by the statutory provisions of the bill are as follows (existing law proposed to be omitted is enclosed in black brackets, new material is underlined, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

SEC. 4. * * *

(c)(1)—There are hereby established in the Treasury the following revolving funds: (a) a disaster loan fund which shall be available for financing functions performed under sections 5(e), 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), and 7(c)(2) of this Act; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 5(g), 7(a), and 8(a) of this Act, and Titles III, IV and V of the Small Business Investment Act of 1958.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 5(e), 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(c)(2), and 7(g) of this Act shall be paid into a disaster loan fund; and (B) pursuant to sections 5(g), 7(a), 7(e), 7(h), 7(i), 7(l), and 8(a) of this Act, and Titles III, *IV* and V of the Small Business Investment

Act of 1958, shall be paid into the business loan and investment fund.

* * * * * * *

SEC. 5. * * *

(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act [, except those under section 7(a)(13)]: *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

* * * * * * *

SEC. 7(a). * * *

(12)*(A)* The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: *Provided, however,* That such loan proceeds shall not be used primarily for research and development.

(B) The Administration may provide loans under this section to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph (by participation or otherwise) may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than $1,000,000.

* * * * * * *

SEC. 7(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of floods, riots or civil disorders, or other catastrophes: *Provided,* That such damage or destruction is not compensated for by insurance or otherwise; *"Provided further, that the Administration may increase the amount of the loan by up to an additional 20 percent, if it determines such increase is necessary or appropriate to protect the damaged or destroyed property from future disasters by taking mitigating measures, including but not limited to, construction of retaining walls or sea walls, grading or contouring land, relocating utilities, and modifying structures;".*

* * * * * * *

SEC. 7(c) * * *

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of

loss. The interest rates for loans made under paragraphs 7(b) (1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation. Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises. *Provided further,* That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing. *The Administration shall not require collateral for loans of $10,000 or less which are made under subsection (b)(1).*

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

* * * * * * *

SEC. 8(b). It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

(1)(A) to provide technical and managerial aids to small business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, by disseminating such information, and by such other activities as are deemed appropriate by the Administration. Such assistance also may be provided to small business concerns by the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: *Provided,* That the Administration shall take such actions as it deems appropriate to ensure that *any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and* the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promo-

tion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor. *In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and that the Administration is given primary recognition in all cosponsored printed materials.*

* * * * * * *

[NOTE.—The following change extends the repeal date on amendments to Sec. 8(b)(1)(A) made by Section 7 of the Small Business Computer Security and Education Act of 1984.]

SEC. 7. (a) This Act shall take effect on October 1, 1984.

(b) The amendments made to section 4(b)(3) of the Small Business Act by section 3 of this Act [and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act] are repealed on October 1, 1988 until *the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are repealed on October 1, 1990.* Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act.

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SEC. 15 * * *

[(c)(1) During fiscal years 1981, 1982, and 1983, public and private not-for-profit organizations eligible for assistance under section 7(h) of this Act shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $100,000,000 for each such year: *Provided,* That the Administrator shall monitor and evaluate such participation and in any case where the Administrator and the Executive Director of the Committee for the Purchase from the Blind and Severely Handicapped find that the participation of such organizations has or may cause severe economic injury to for-profit small businesses, the Administrator shall and is hereby authorized to direct and require every agency and department having procurement powers to take such actions as the Administrator and the Executive Director or the Committee for the Purchase from the Blind and Severely Handicapped may deem appropriate to alleviate the economic injury sus-

tained or likely to be sustained by such for-profit small businesses.]

(c)(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46).

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

(C) The term "handicapped individual" has the same meaning given such term in section 3(f).

(2)(A) During each of the fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year of not more than $50,000,000.

(B) In each of the fiscal years 1989 through 1993, not more than $8,000,000 of the $50,000,000 authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47).

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than 10 days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than 30 days after the filing of the appeal, the Administrator shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 percent of the direct labor performed on each item being produced under the contract in the sheltered workshop or per-

formed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

* * * * * * *

(l)(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

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(D) obtain from any governmental source, and make available to personnel of the appropriate activity, [unrestricted] technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such [unrestricted] technical data;

(E) have access to [the unclassified] procurement records and other data of the procurement center *commensurate with the level of such representative's approved security clearance classification;*

* * * * * * *

(l)(3) A breakout procurement center representative is authorized to appeal [a] *the* failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be [in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 days of its receipt.] filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

* * * * * * *

(l)(6) For purposes of this subsection, the term "major procurement center" means a procurement center [of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.] that, in the opinion of the Administrator, purchases substantial dollar amounts of items other than commercial items and that has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.

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SEC. 20. * * *

[NOTE.—The first sentence in Sec. 20(a)(1), authorizing appropriations for fiscal years 1981–1984, are stricken. Also stricken are Sec. 20(b) through (x), which authorized specific program levels and appropriations for fiscal years 1978 through 1987. Sec. 20(y) and (z) are redesignated as subsections (b) and (c).]

(d) The following program levels are authorized for fiscal year 1989:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $75,000,000 in direct and

immediate participation loans, and of such sum, the Administration is authorized to make—

(A) $20,000,000 in loans as provided in paragraph (10),

(B) $30,000,000 in loans as provided in paragraph (11), and

(C) $25,000,000 in loans to disabled veterans and Vietnam-era veterans, as defined in section 1841, of Title 38, United States Code, under the general terms and conditions of subchapter IV of chapter 37 of such title.

(2) For the programs authorized by section 7(a) of this Act and section 504 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,320,000,000 in deferred participation loans and guarantees of debentures, and of such sum, the Administration is authorized to make—

(A) $5,000,000 in loans as provided in paragraph (10) of section 7(a),

(B) $65,000,000 in loans as provided in paragraph (11) of section 7(a),

(C) $450,000,000 in loans as provided in paragraph (13) of section 7(a) and guarantees of debentures as provided in section 504 of the Small Business Investment Act of 1958, and

(D) $75,000,000 in loans as provided in paragraph (12)(B) of section 7(a) (as added by section 196(d) of the Small Business Administration Reauthorization and Amendments Act of 1988).

(3) For the programs authorized by Title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities, and to make $272,000,000 in guarantees of debentures.

(4) For the programs authorized by part B of Title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

(e) There are authorized to be appropriated to the Administration such sums as may be necessary for Fiscal Year 1989, including $18,000,000 to carry out the provisions of section 412 of the Small Business Investment Act of 1958, and $248,000,000 for salaries and expenses of the Administration.

(f) There also are authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

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SEC. 21 * * *

(g)(1) The Administrator shall appoint a Deputy Associate Administrator for [Management Assistance] *Business Development (Small Business Development Center Program)* who shall report to the Associate Administrator for [Management Assistance] *Business Development* and who shall serve without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and without regard to Chapter 51, and Sub-

chapter III of Chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

(2) The sole responsibility of the Deputy Associate Administrator for [Management Assistance] *Business Development (Small Business Development Center Program)* shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Deputy Associate Administrator for [Management Assistance] *Business Development (Small Business Development Center Program)* shall confer with and seek the advice and counsel of the Board in carrying out the responsibilities described in this subsection.

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SMALL BUSINESS INVESTMENT ACT

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SEC. 310. * * *

(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Each such company shall be examined [at least once each year,] *every 2 years,* except that the Administrator may waive [examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.] *the examination for up to one additional year if—*

(1) the Inspector General determines such a delay would be appropriate, based on—

(A) the total amount of debentures issued by the company,

(B) the company's repayment record,

(C) the prior operating experience of the company,

(D) the contents and results of the last examination, and

(E) the management experitse of the company; or

(2) the company operations have been suspended while the company is involved in litigation or is in receivership.". Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is regis-

tered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.

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SEC. 321. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.—

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SEC. 322. PERIODIC ISSUANCE OF GUARANTEES AND TRUST CERTIFICATES.—

The Administration shall issue guarantees under section 303 and trust certificates under section 321 at periodic intervals of not less than every 3 months and shall do so at such shorter intervals as it deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

[SEC. 403. FUND]

[There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 401. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 401, shall be deposited in the fund. All expenses, excluding administrative expenses, pursuant to operations of the Administrator under section 401 shall be paid from the fund.]

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[SEC. 405. FUND]

[There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 404. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 404 shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 404 shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.]

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SEC. 411. AUTHORITY OF THE ADMINISTRATION.—

(a)*(1)* The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety [(the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety)] against loss, as hereinafter provided, [as the result of] *resulting from* a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,250,000[,] subject to the following conditions:

[(1) the person who would be the principal of the bond is a small business concern;

[(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

[(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section;

[(4) the Administration determines that there is a reasonable expectation that such person will perform the convenants and conditions of the contract with respect to which the bond is required;

[(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost; and

[(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.]

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety.

(3) The Administration may authorize any surety, without further Administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the convenants and conditions of the contract with respect to which such bond is required, and terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): *Provided, however—*

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) *a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3);* and

[(3) no new agreements to indemnify shall be entered into pursuant to this subsection subsequent to two years after the date of its enactment.]

(3) [(2)] no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable [; and]. *In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection* (a).

* * * * * * *

(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, [or]

(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,250,000 [.],

(3) the surety has breached a material term or condition of such guarantee agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

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[(g) The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.]

(g)(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once each year by examiners selected and approved by the Administration.

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(j) In prescribing special size standards for participation in the program authorized by this section, the Administration shall ensure that a firm meeting such size standard may be determined to be a small business concern under the size standard establishing its eligibility to participate in the other programs of the Administration.

* * * * * * *

SEC. 412. FUND.—

(a) There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

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SEC. 503. DEVELOPMENT COMPANY DEBENTURES.—

(a)(1) Except as provided in subsection (b), the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may be regulation determine to be appropriate. *The Administration shall not decline to issue such guarantee on the basis that the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) are not identical, if such property is owned by a related party. For purposes of the preceding sentence, the term 'related party' means a father, mother, son ,daughter, wife, husband, brother or sister.*

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[NOTE.—Sec. 503 (c) and (d) are redesignated as subsections (d) and (e) respectively]

(c) Notwithstanding any other provision of law, the Administration is authorized and directed to promulgate and publish quarterly regulations establishing a maximum permissible interest rate on any commercial loan which funds any portion of the cost of the project which is not funded by a debenture guaranteed under this section.

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SEC. 504. PILOT PROGRAM INVOLVING SALE OF DEVELOPMENT COMPANY DEBENTURES.—

(a) Notwithstanding any other law, rule, or regulation, the Administration shall [conduct a pilot program involving the sale] *sell* to investors, either publicly or by private placement, [of] debentures [guaranteed] pursuant to section 503 [of the Small Business Investment Act of 1958] as follows—

[(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000; and]

(1) of the program levels otherwise authorized by law for fiscal [year] *years* 1987 *and* 1988, an amount not to exceed $425,000,000; and

(2) *all* of the program levels [otherwise] authorized [by law] for fiscal year [1988] *1989 and subsequent fiscal years.*

(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation, *if—(A)* the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 503 *and, (B)* [*of the Small Business Investment Act of 1958 and which*] *such obligation* is being sold pursuant to the provisions of the [pilot] program authorized [in] *by* this section,

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

SEC. 505. AUTHORITY FOR ISSUANCE OF TRUST CERTIFICATES.—

(a) The Administration is authorized to issue trust certificates representing ownership of all [of] or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this Act: *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

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